## UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

## SPURLINO MATERIALS, LLC.

and	Cases 25-CA-30053
	25-CA-30054
	25-CA-30080
	25-CA-30104
	25-CA-30156
	25-CA-30179
	25-CA-30362

COAL, ICE, BUILDING MATERIAL, SUPPLY DRIVERS, RIGGERS, HEAVY HAULERS, WAREHOUSEMEN AND HELPERS, and LOCAL UNION NO. 716 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA

## ORDER DENYING MOTION

The Acting General Counsel's Motion to Correct Inadvertent Error is denied. The Acting General Counsel asserts that the Board's March 31, 2009 Decision and Order in this case<sup>1</sup> inadvertently failed to include a make-whole remedy for losses suffered by discriminatee Gary Stevenson as a result of his unlawful suspension and discharge by the Respondent.

Contrary to the Acting General Counsel's assertion, we find that the Board's March 31, 2009 Order encompassed all of the violations committed by the Respondent against Stevenson, including the Respondent's suspension and discharge of him that violated Section 8(a)(3) and (1). Paragraph 2(c) of the Board's Order requires the Respondent to make Stevenson whole for any loss of earnings and other benefits "suffered as a result of the discrimination against" him "in the manner set forth in the amended remedy section of this decision." It is clear from the Board's decision (as well as the Administrative Law Judge's decision, which the Board adopted on this matter) that the discrimination against Stevenson includes his suspension and discharge.

<sup>&</sup>lt;sup>1</sup> 353 NLRB 1198. This Decision and Order, which was issued by a two-Member Board, was subsequently affirmed and adopted by a three-Member panel in an August 9, 2010 Decision and Order, reported at 355 NLRB No. 77.

Further, the Board's amended remedy, at footnote 14, expressly refers to "the backpay remedy for Stevenson's unlawful suspension and discharge" in setting forth the standards for computing the backpay and interest due him because of the suspension and discharge. Thus, the Acting General Counsel's position that the Board failed to provide a make-whole remedy for Stevenson's suspension and discharge is incorrect. Accordingly, we find that no correction of the Board's Order is warranted because that Order—which was enforced in full by the United States Court of Appeals for the Seventh Circuit—requires the Respondent to make Stevenson whole for losses incurred as a result of his unlawful suspension and discharge.

In addition, even were there merit to the Acting General Counsel's assertions, his Motion would be denied on the ground that the Board would have no jurisdiction to modify its prior Order because the U.S. Court of Appeals for the Seventh Circuit enforced that Order on June 23, 2011. See Section 10(d) and (e) of the Act; Section 102.49 of the Board's Rules and Regulations; and *Royal Typewriter Company*, 239 NLRB 1, 2 (1978).

Dated, February 24, 2012.

MARK GASTON PEARCE, CHAIRMAN

BRIAN E. HAYES, MEMBER

RICHARD F. GRIFFIN, JR., MEMBER